



MONTGOMERY COUNTY ETHICS COMMISSION

Steven Rosen
Chair

Kenita V. Barrow
Vice Chair

March 9, 2016

Advisory Opinion 16-01-002

This is in response to your request for an advisory opinion with respect to whether a local town is a “business” as defined in Section 19A-4(b) of the Montgomery County Public Ethics Law. You recently made a request for outside employment approval from the Commission as required by the County’s ethics law (19A-12(a)), as you are a new employee of the County and at the same time are employed as mayor of a local town.

In your outside employment request application, you responded “yes” to the question “Is the prospective employer subject to the authority of, do business with, regulated by, or negotiate or contract with your County department/agency?”

19A-12(b) of the ethics law provides:

Specific restrictions. Unless the Commission grants a waiver under subsection 19A-8(b), a public employee must not:

- (1) be employed by . . . any business that:
 - (A) is regulated by the County agency with which the public employee is affiliated; or
 - (B) negotiates or contracts with the County agency with which the public employee is affiliated

19A-12(b)(1) focuses on employment with “a business”, so if a local town is not considered a business under the County ethics law, 19A-12(b)(1) would not apply.

“Business” is a term defined in the ethics law at 19A-4(b).

(b) *Business* means any for-profit or non-profit enterprise, including a corporation, general or limited partnership, sole proprietorship, joint venture, association, firm, institute, trust, or foundation. Business does not include a County agency, but includes an independent fire department or rescue squad.

For the following reasons, the Commission concludes that a local town is a “business” for purposes of the application of the prohibition in 19A-12(b)(1).

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100 MARYLAND AVENUE, ROOM 204, ROCKVILLE, MARYLAND 20850
OFFICE: 240.777.6670 FAX: 240.777.6672

The specific exclusion in 19A-4(b) of “a County agency” from the definition of business suggests that without the exclusion, the definition might be read to include County agencies as a “business.” This in turn suggests that other than this exclusion, the definition of business is intended to be broad and inclusive. (Of course, it would not make sense to treat other employment by a County agency as potentially conflicting as in either instance, the employee would be serving the County – the risks associated with serving two masters, which 19A-12(b)(1) is intended to prevent, would not be present.) Further, the specific inclusion in 19A-4(b) of “an independent fire department or rescue squad” reflects the definition’s intent to be inclusive of entities providing services typically provided by government or community entities.

The County’s ethics law is to be “liberally construed to accomplish the policy goals” set forth under the law, which includes avoidance of “improper influence or even the appearance of improper influence.” The Commission believes that there is potential for improper influence or appearance of improper influence where a County employee works at a local town and the employee’s County agency regulates, negotiates or contracts with the local town.

The Commission notes that the Maryland Public Ethics Law prohibits certain outside employment by an “entity” and then defines “entity” as “(1) a person; or (2) a government or instrumentality of government.” See sections 5-101(i) and 5-502(b). The County’s ethics laws are similar to and generally follow the State ethics law.

The Commission also recognizes the availability of the waiver process pursuant to 19A-8(b) for those instances where the outside employment provision of 19A-12(b) should not apply, such as where the outside employment is not likely to create an actual conflict of interest. The Commission believes that the waiver process – rather than reading the definition of business narrowly – is the ethics laws’ pathway to flexibility in an instance where the risk of conflict is minimal. In addition, the process enables the Commission’s to set forth appropriate conditions to ensure the objectives of the ethics law

Accordingly, you will need to apply for a waiver of 19A-12(b)(1) in accordance with 19A-8(b). In your application, please include information as to whether execution of your County job can impact the town that you are mayor of and whether in your role as mayor you would be involved in matters that involve the County either through direct contact with County employees or otherwise.

For the Commission:



Steven Rosen, Chair